## REMARKS/ARGUMENTS

Applicants have amended the claims and specification and submit that the present amendments do not constitute new matter. The support for the amendment to the Specification find support in the specification in the same paragraph that was amended, which explains that the active, beads and first glaze were prepared and then subsequently had four different levels of glaze added, which resulted in the data provided in dissolution profile reported in the Table.

Claims 2, 3, and 62-80 have been cancelled as falling within a non-elected invention. Claims 1-61 are rejected and claims 2-4, 9-11, 21-23, 29-31, 42-44 and 49-51 are objected to. Applicants' have elected Group I for further prosecution and further elected as the species for examination: (a) guaifenesin as the first active expectorant; and (b) phenylephrine as the second active decongestant.

**A. Claim Objections.**

Applicants have cancelled and/or amended the claims to address each of the grounds for claim objection; withdrawal of all the objections is respectfully requested.

**B. Rejection under 35 U.S.C. §112, First Paragraph.**

Claims 1-61 are rejected under 35 U.S.C. §112, First Paragraph based on a lack of teaching the best mode of making and using the invention. Applicants have amended the specification to specifically designate which portion of the composition taught in the specification is the "SR Mix #1", namely, the "10.93 Kgs of phenylephrine were added to the beads using 4.32 Kgs of pharmaceutical glaze" taught in paragraph [0080]. This amendment does not constitute new matter as it merely clarifies what was already in the specification, that is, that the "10.93 Kgs of phenylephrine were added to the beads using 4.32 Kgs of pharmaceutical glaze" (i.e., the SR Mix #1 for Sustained Release Mix #1), was further processed with additional layers of pharmaceutical glaze.

Furthermore, the skilled artisan will recognize that a "pharmaceutical glaze" is an alcohol-based solution of food grade shellac, which is obtained from the insect Coccus lacca (often referred to in the industry as "beetle juice"). Other common terms well known in the art also include confectioners glaze, resinous glaze, pure food glaze and natural glaze. Pharmaceutical glazes are widely used by drug and nutritional supplement industry as a coating material for tablets and capsules. Applicants agree that Eudragit RD100, which is dissolved in the stomach, is described by Applicants as an immediate release coating (see entire text of paragraph [0044]), therefore the

specification is clear on the components and methods for manufacturing the present invention as claimed would not be coated by Eudragit RD100. Applicants fail to understand the point of confusion and respectfully request clarification. The skilled artisan would recognize that a "sustained release" active would be coated, as taught by the present application, for release over time as described in the specification and as claimed and would not include Eudragit RD100. Withdrawal of the rejection under 35 U.S.C. §112, First Paragraph is respectfully requested.

**C. Rejection under 35 U.S.C. §112, Second Paragraph.**

Claims 60 stands rejected under 35 U.S.C. §112, Second Paragraph for indefiniteness. The claim has been amended to clearly state that the second active is in the form of a mini-tab, which has an extended release profile. In light of the amendment, withdrawal of the rejection under 35 U.S.C. §112, Second Paragraph is respectfully requested.

**D. Rejection under 35 U.S.C. §102(a).**

Claim 61 is rejected under 35 U.S.C. §102(a) as being anticipated by Davis, et al., U.S. Patent Application No. US2003/0049318. Davis is said to teach sustained release formulations that contain guaifenesin and at least one additional drug in a bi-layer tablet. Claim 61 has been amended to claim what is not taught by Davis, namely, an enveloped composition wherein at least one of the actives is disposed on separate carrier.

**E. Rejection under 35 U.S.C. §103(a).**

Claims 1-15, 17-19, 40-55 and 57-59 stand rejected under 35 U.S.C. §103 as being obvious in light of Davis, et al., U.S. Patent Application No. US2003/0049318, Krishnamurthy, et al., U.S. Patent No. 6,419,960 and Dang et al., U.S. Patent No. 6,462,094.

Dang merely discloses an immediately available composition of both phenylephrine tannate and guaifenesin. Dang does not teach any type of sustained release formulation, that is, Dang teaches a "dumb" pill that has phenylephrine tannate and guaifenesin.

Davis teaches an immediate release formulation of guaifenesin and a sustained release formulation of guaifenesin. Davis does not disclose how to make an enveloped formulation that combines a first active on a carrier and a second active on a carrier, but rather, a compressed bi-layer tablet in a delayed release matrix. Again, Davis teaches a relatively "dumb" pill that an immediate release layer and a controlled release layer.

Krishnamurthy is directed to formulations that are provided, as the title directs, "Controlled Release Formulations Having Rapid Onset and Rapid Decline of Effective Plasma Drug Concentrations." Krishnamurthy compares the controlled release of a psychostimulant in two forms, as controlled release methylphenidate with Ritalin® (a sustained release form of methylphenidate). In a sense, Krishnamurthy teaches a super-smart formulation which consists of a multi-layer release (MLR) bead in which "[e]ach bead contains a series of layers with different release characteristics--an outer immediate release layer; a release delaying layer; a controlled release layer; and an immediate release core." (Col. 5, ll. 36-39). By using a complex series of coatings, the inventors claim to produce a "square wave" profile with "a rapid onset, a prolonged action, followed by rapid offset" (Col. 4, ll. 4-6).

The combination of Dang and Davis does not teach an enveloped formulation in which an expectorant and a decongestant are provided on carriers for immediate and sustained release. Krishnamurthy does not provide the missing component, that is, a two-part immediate and sustained release formulation on carriers. Krishnamurthy is directed to a "square wave" release with rapid onset and rapid offset and does not provide the missing component, a simple sustained release coated bead in an envelope.

Furthermore, there is no reference in the art cited that would lead the skilled artisan to combine the components of the present invention, absent the present disclosure. That is, the art fails to provide the combination of an immediate and an extended release formulation on the carrier in an enveloped formulation in the manner claimed. The Federal Circuit has consistently held that "particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000).

Accordingly, Applicants respectfully submit that claims 1, 4-15, 17-19, 40-55 and 57-59 and 20-28, are not obvious over Davis, Krishnamurthy and Dang and are, therefore, allowable under 35 U.S.C. § 103(a). For the reasons mentioned above, the Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103.

Claims 20-35 and 37-39 stand rejected under 35 U.S.C. §103 as being obvious in light of Davis, et al., U.S. Patent Application No. US2003/0049318, Krishnamurthy, et al., U.S. Patent No. 6,419,960

and Dang et al., U.S. Patent No. 6,462,094 in further view of the Entex® LA prescribing information (12/2002). The response to the rejections based on Davis, et al., U.S. Patent Application No. US2003/0049318, Krishnamurthy, et al., U.S. Patent No. 6,419,960 and Dang et al., U.S. Patent No. 6,462,094 are incorporated be reference herein.

The Entex® LA prescribing information cited teaches a tablet teaches a sustained-release tablet of guaifenesin and pseudoephedrine hydrochloride. From the outset, Applicants note that pseudoephedrine ((1S,2S)-2-methylamino-1-phenylpropan-1-ol) is not phenylephrine (3-(1-hydroxy-2-methylamino-ethyl)phenol), regardless, assuming that the actives serve overlapping functions, the Enter® LA art still failed to provide a critical missing component. Specifically, the prescribing information teaches that the "Tablets **may be broken in half** for ease of administration without affecting release of the medication but **should not be crushed or chewed** prior to swallowing." (Emphasis in original)(middle column above Pharmaceutical Information). What the Entex® LA prescribing information provides is that fact that the combination of these two active existed at the time of filing. It does not, however, provide for an enveloped formulation (as the Action notes, "[i]t is not clear how one would formulate an enveloped pharmaceutical of two actives in more that one dose." (Emphasis in original, OA of 6/23/06 page 7). Entex® LA may be provided in more that one dose because both of the actives are provided in a single sustained-release format. Therefore, Entex® LA prescribing information (12/2002) is also missing critical claimed components, namely, a single enveloped formation that includes both an immediate release and an extended release active.

Accordingly, Applicants respectfully submit that claims 20-35 and 37-39, are not obvious over Davis, Krishnamurthy, Dang and Entex® LA and are, therefore, allowable under 35 U.S.C. § 103(a). For the reasons mentioned above, the Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103.

## Conclusion

Accordingly, after entry of this Amendment, the claims numbering has been corrected, original Claims 1 and 4-61 are pending in the above-identified Application. Examination on the merits and an early Notice of Allowance are earnestly requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Dated this September 5, 2006.

Respectfully submitted,
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